

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 732 of 1999

to

FIRST APPEAL No 761 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SPECIAL LAND ACQUISITION OFFICER

Versus

MANUBHAI CHHOTABHAI PATEL

Appearance:

MR KG SHETH, AGP for Appellant No.1
MISS SEJAL MANDAVIA, for Appellant No.2
MR AJ PATEL, for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE C.K.BUCH

Date of decision: 06/04/2000

COMMON JUDGEMENT (PER : M.H.KADRI, J)

Appellants, by filing these First Appeals under Sec.54 of the Land Acquisition Act, 1894 (to be referred to as the "Act" for short), read with sec.96 of the Code of Civil Procedure, 1908, have questioned the validity and legality of the common judgment and award dated 16th May, 1998 of the learned 2nd Assistant Judge, Kheda at Nadiad in a group of Land Reference Case Nos. 1159/96 to 1178/96, 1035/96 to 1044/96. As these appeals arise from a common judgment and award of the Reference Court and as common questions of facts and law are involved in these First Appeals, we propose to dispose of them by this common judgment.

Executive Engineer, Narmada Canal, Division 3/3, Kapadwanj, by his letter dated 7th November, 1990 made a proposal for acquisition of agricultural lands of village Antroli, Ta: Kapadwanj, for the public purpose of Narmada Canal. Said proposal was scrutinised by the State Government and notification under Sec.4(1) of the Act was published in the Government Gazette on 27th June, 1991. In response to the notice issued to the respondents, they appeared before the Land Acq. Officer and claimed compensation of the acquired lands at the rate of Rs. 10,000/ per Are. Land Acq. Officer, on the basis of the material placed before him, made his award on 21st October, 1992 and offered compensation for the acquired lands of village Antroli at the rate of Rs. 2.20 ps. per sq.mt. for non-irrigated lands and at the rate of Rs. 3.30 per sq.mt. for irrigated lands. Claimants were of the opinion that the compensation offered by the Land Acq. Officer was inadequate and, therefore, they filed written applications under Sec.18 of the Act requiring the Land Acq. Officer to refer their applications to the District Court, Kheda for determination of the market value of the acquired lands. Accordingly, said applications were referred by the Land Acq. Officer to the District Court, Kheda at Nadiad which came to be numbered as Land Reference Cases as referred to above. All the reference cases were consolidated.

Parties led common evidence in Land Reference Case No.1169/96.

In the applications, respondents claimed that market value offered by the Land Acq. Officer was inadequate looking to the prevailing market price of the lands of surrounding area. It was further claimed that looking to the great potentiality and fertility of the acquired lands, amount of compensation offered by Land Acq. Officer was inadequate which required to be enhanced. In the applications, respondents claimed compensation of

the acquired lands at the rate of Rs.10,000/ per Are. It is averred that their agricultural lands were highly fertile and they used to raise three crops in year and were earning net profit of Rs.25,000/ per vigha per year from the acquired lands. It was claimed that agricultural lands of the same village were acquired in the month of June,1990 and August,1990 for the same purpose wherein market price was determined at the rate of Rs.2000/ per Are. Therefore, the claimants claimed that compensation offered by the Land Acq.Officer was inadequate and they should at least be awarded compensation at the rate of Rs.2000/ per Are viz Rs.20.00 per sq.mt.

The appellants filed their reply at exh.5, inter alia, contending that the compensation offered by the Land Acq.Officer was adequate and the Land Acq.Officer had taken into consideration all the relevant aspects for fixing market price of the acquired lands. It is further averred that Land Acq.Officer had taken into consideration fertility of the lands, income and crop

pattern of the acquired lands and had awarded just compensation and, therefore, applications be dismissed.

On the basis of rival assertions made by the parties, Reference Court raised common issues at exh.6.

Claimants, to substantiate their claim of enhanced compensation of the acquired lands, examined Javansinh Jibhabhai Parmar at exh.33 who was claimant of Land Ref.Case No. 1177/96. The witness deposed that his other agricultural lands bearing survey no.151/5 were acquired in the month of June 90 for the public purpose of Narmada Canal Project, wherein compensation of the lands of the same village was determined by the Reference Court as on June,1990 at the rate of Rs.2000/ per Are. He claimed that the claimants of present acquired lands should also be awarded compensation at the rate of Rs.2000/ per Are viz. Rs.20.00 per sq.mt. He deposed that earlier acquired lands of same village were comparable with the present acquired lands and crop pattern of the present acquired lands is similar to that of earlier acquired lands. During his deposition, the witness had produced, certified copy of the judgment and award rendered in Land Ref. Case Nos. 356/94, 1077/92 to 1085/92 etc. at exh.32. The witness was not cross-examined by the learned counsel for the appellants in the Reference Court. The claimants had also produced certified copies of 7/12 extracts of the acquired lands at exh.16 to 31. It may be mentioned that previous award produced by the claimants' witness Juvansinh was admitted in evidence with the consent of the learned counsel for the appellants.

The appellants did not lead oral as well as documentary evidence before the Reference Court. Reference Court, appreciating totality of the evidence adduced, mainly relied on the previous award exh.32 with respect to the acquired lands of the same village for determination of the market value of the acquired lands. Reference Court observed that previous award exh.32 was in all respect, relevant and comparable for the determination of the market value and further observed that present acquired lands and the acquired lands of previous award exh.32 are of the same village, were having same fertility and agriculturists of both the agricultural lands were raising same crops with same crop pattern. As stated earlier, lands which were the subject matter of the previous award exh.32, were acquired in between June 1990 to August 1990 for which Reference Court had determined the market value at the rate of Rs.2000/ per Are. Reference Court, therefore, relying on the previous award exh.32, had determined the market value of the present acquired lands of village Antroli as on 27th June,1991 at the rate of Rs.2000/ per Are which is challenged in these appeals by the appellants.

We have perused the record and proceedings of the Reference Court at the time of hearing of these appeals. Learned AGP Mr. Sheth for the appellants has submitted that previous award exh.32 which was in respect of the agricultural lands of village Antroli, was not at all relevant and comparable in determining the market value of the present acquired lands. Learned counsel for the Government has vehemently submitted that the compensation determined by the Reference Court is excessive. He has further submitted that the claimants had not produced any relevant piece of evidence for determination of market value of present acquired lands of village Antroli. Learned AGP, next, contended that claimants had not led sufficient evidence with regard to enhancement of compensation claimed in the Reference Court and, therefore, appeals be entertained and allowed. Learned counsel for the Respondents has supported the judgment and award of the Reference Court and has submitted that just and adequate compensation is awarded by the Reference Court and, therefore, appeals be dismissed.

It is well settled that previous award of the Reference Court in respect of similar lands of the same village or nearby village and which has become final between the parties can be relied upon for the purpose of ascertaining market value of the lands acquired subsequently from adjoining village. Previous award provides good guidelines for determination of the market value of the acquired lands which are acquired subsequently by a latter notification issued under

sec.4(1) of the Act. In absence of any other evidence such as sale transaction, evidence with regard to yield of agricultural lands, the evidence produced in the nature of previous award is also one of the method for determination of the market value of the acquired lands. In the present case, claimants' witness Juvansinh Jibhabhai had demonstrated before the Reference Court that the agricultural lands referred to in the previous award and the present acquired lands are of the same village Antroli and were in all respect having same fertility and agriculturists of both the acquired lands were used to produce similar crops. It is borne out from the evidence produced in the present case that agricultural lands of previous award as well as present acquired lands, are of same village Antroli and were of similar kind and agriculturists used to raise crops of the same pattern. Therefore, we are of the opinion that the Reference Court has not committed any error in placing reliance on the previous award exh.32 which was with regard to the acquired lands of the same village Antroli for determination of the market value of the present acquired lands. It is required to be stated that the previous award at exh.32 was challenged in this Court by filing First Appeal Nos. 4682/98 to 4807/98 and the Division Bench of this Court (Coram : M.R. Calla & R.P.Dholakia, JJ), by the judgment and order dated 30th April, 1999, confirmed the determination of the market value of the acquired lands as on June 1990 & August 1990 at the rate of Rs.2000/ per Are viz. Rs.20.00 per sq.mt. Therefore, the award exh.32 on which reliance was placed by the Reference Court for determination of the market value of the present acquired lands, had become final. Claimants' witness Juvanishh at exh.33 had proved that the lands of previous award exh.32 and the present acquired lands, in all respect, were having same fertility and agriculturists of both the lands used to raise same crops and said lands were irrigated lands. Taking over all view of the matter, we are of the opinion that the Reference Court had not committed any error in placing reliance on the previous award exh.32 which had become final and which was comparable for determination of the market value of the present acquired lands. It is not brought to the notice of this Court that judgment of this court rendered in First Appeal Nos. 4682/98 to 4807/98 is challenged in the higher forum. Therefore, determination of the market value of the acquired lands of village Antroli at the rate of Rs. 2000/ per Are had become final. We, therefore, do not find any merits in the submissions of learned counsel for the appellants that determination of market value of the present acquired lands is highly excessive.

As a result of foregoing discussion, we do not find any merits in this appeals and they deserve to be rejected. Hence, market value of the acquired lands determined at the rate of Rs.2000/ per Are viz. Rs.20.00 per sq.mt. as on 27th June, 1991, is hereby confirmed. Benefits extended in favour of the respondents under the statutory provisions of the Act are also eminently just and proper and do not call for any interference by this Court. However, it is made clear that respondents shall not be entitled to interest on the amount of solatium and on additional amount under sec. 23(1-A) of the Act as per the settled legal position. Appeals are dismissed. There shall be no order as to costs.

06.04.2000 [M.H. KADRI, J]

[C.K. BUCH, J]

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